



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-818, C-552-819]

Certain Steel Nails from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT) final judgment in this case is not in harmony with Commerce's final scope ruling. Commerce, therefore, finds that certain zinc anchors imported by OMG, Inc. (OMG), are not within the scope of the antidumping and countervailing duty orders on certain steel nails from the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable May 24, 2019.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas at (202) 482-3813, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2016, OMG, an importer of zinc anchors, filed a request with Commerce for a scope ruling that its zinc anchors should be excluded from the scope of the antidumping and countervailing duty *Orders*<sup>1</sup> on certain steel nails from Vietnam.<sup>2</sup> OMG described the zinc

---

<sup>1</sup> See *Certain Steel Nails from the Socialist Republic of Vietnam: Countervailing Duty Order*, 80 FR 41006 (July 14, 2015); *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (collectively, the *Orders*).

anchors as a unitary article of commerce consisting of two parts: (1) a zinc alloy body; and (2) a zinc plated steel pin.<sup>3</sup>

On February 6, 2017, Commerce issued its Final Scope Ruling, in which it determined that OMG's zinc anchors are unambiguously within the scope of the *Orders* based upon the plain meaning of the *Orders* and the description of the zinc anchors contained in OMG's scope ruling request and supplemental questionnaire responses.<sup>4</sup> Commerce also found that several factors under 19 CFR 351.225(k)(1) – particularly the petition, the final report of the International Trade Commission (ITC), and a prior scope ruling – further supported Commerce's determination that OMG's zinc anchors fall within the scope of the *Orders*.<sup>5</sup> As a result of the Final Scope Ruling, Commerce instructed U.S. Customs and Border Protection (CBP) to continue suspension of liquidation of entries of OMG's zinc anchors.<sup>6</sup>

OMG challenged the Final Scope Ruling before the CIT, and on May 29, 2018, the CIT remanded Commerce's scope ruling.<sup>7</sup> In its *Remand Order*, the CIT held that OMG's zinc anchor is not a "nail" within the plain meaning of the word and is therefore outside the scope of the *Orders*.<sup>8</sup> In determining the definition of a "nail," the CIT consulted *The American Heritage Dictionary of the English Language* and *Webster's Third New International Dictionary of the English Language (Unabridged)*.<sup>9</sup> The CIT held that both of these sources unambiguously

---

<sup>2</sup> See "Certain Steel Nails from the Socialist Republic of Vietnam: Scope Ruling Request," dated August 5, 2016.

<sup>3</sup> *Id.* at 3, 23.

<sup>4</sup> See Antidumping and Countervailing Duty Orders on Certain Steel Nails from the Socialist Republic of Vietnam: Final Scope Ruling on OMG, Inc.'s Zinc Anchors (Final Scope Ruling), dated February 6, 2017 at 9-10.

<sup>5</sup> *Id.* at 10.

<sup>6</sup> See Message Number 7041303, dated February 10, 2017; see also Message Number 7041301, dated February 10, 2017.

<sup>7</sup> See *OMG, Inc. v. United States*, Court No. 17-00036, Slip. Op. 18-63 (CIT 2018) (*Remand Order*).

<sup>8</sup> See *Remand Order*, Slip Op. 18-63 at 9.

<sup>9</sup> *Id.*

present “a ‘single clearly defined or stated meaning {of a nail}’: a slim, usually pointed object used as a fastener designed for impact insertion.”<sup>10</sup>

The CIT held that although the steel pin fits the common definition of a nail, the zinc anchor as a whole, does not.<sup>11</sup> According to the CIT, because OMG’s zinc anchor is a unitary article of commerce, the entire product, not just a component part, must fit the definition of a nail to fall within the scope of the *Orders*.<sup>12</sup> The CIT concluded that because OMG’s zinc anchors are composed of a steel pin and a zinc body, the entire product is not a nail.<sup>13</sup> Additionally, the CIT held that because the relevant industry classifies anchors with a steel pin as anchors, not nails, trade usage further supports the conclusion that OMG’s zinc anchors are not nails.<sup>14</sup> The CIT remanded the Final Scope Ruling to Commerce for further consideration consistent with the CIT’s opinion.<sup>15</sup> The CIT also directed Commerce to issue appropriate instructions to CBP regarding the suspension of liquidation of OMG’s zinc anchors.<sup>16</sup>

Pursuant to the CIT’s instructions, on remand, under protest, Commerce found that OMG’s zinc anchors do not fall within the scope of the *Orders*.<sup>17</sup> On May 14, 2019, the CIT sustained Commerce’s Final Remand Results.<sup>18</sup>

### Timken Notice

In its decision in *Timken*,<sup>19</sup> as clarified by *Diamond Sawblades*,<sup>20</sup> the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to sections 516A(c) and (e) of the Tariff Act

---

<sup>10</sup> *Id.* at 9-10.

<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 10-11.

<sup>15</sup> *Id.* at 11.

<sup>16</sup> *Id.*

<sup>17</sup> See Final Results of Redetermination Pursuant to Court Remand, *OMG, Inc. v. United States*, Court No. 17-00036, Slip Op. 18-63 (CIT May 29, 2018), dated August 27, 2018 (Final Remand Results).

<sup>18</sup> See *OMG, Inc. v. United States*, Court No. 17-00036, Slip Op. 19-58, No. 17-00036 (CIT 2019).

of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with Commerce’s determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s May 14, 2019, judgment in this case, sustaining Commerce’s decision in the Final Remand Results that OMG’s zinc anchors fall outside the scope of the *Orders*, constitutes a final decision of that court that is not in harmony with the Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue the suspension of liquidation of OMG’s zinc anchors pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

#### Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, Commerce is amending its Final Scope Ruling and finds that the scope of the *Orders* does not cover the zinc anchors specified in OMG’s Scope Ruling Request. Commerce will instruct CBP that the cash deposit rate will be zero percent for the zinc anchors subject to OMG’s scope ruling request. In the event that the CIT’s ruling is not appealed, or if appealed, upheld by the CAFC, Commerce will instruct CBP to liquidate entries of OMG’s zinc anchors without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

---

<sup>19</sup> See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

<sup>20</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(e)(1) of the Act.

Dated: May 23, 2019.

Jeffrey I. Kessler,  
Assistant Secretary  
for Enforcement and Compliance.

[FR Doc. 2019-11397 Filed: 5/30/2019 8:45 am; Publication Date: 5/31/2019]